

JPA File No.: JPA 05-018
AG Contract No.: KR05-1157TRN
Project: Coconino National Forest
Section: SR 179 MP 308.3
TRACS No.: H3414 01C & H3414 12D
Budget Source Item No.: 15703 & 18402

INTERGOVERNMENTAL AGREEMENT

BETWEEN
THE STATE OF ARIZONA
AND
COCONINO NATIONAL FOREST

THIS AGREEMENT is entered into this date December 15, 2005, pursuant to the Arizona Revised Statutes § 11-951 through 11-954, as amended, between the STATE OF ARIZONA, acting by and through its DEPARTMENT OF TRANSPORTATION (the "State") and COCONINO NATIONAL FOREST, acting by and through its FOREST SUPERVISOR (the "Forest Service").

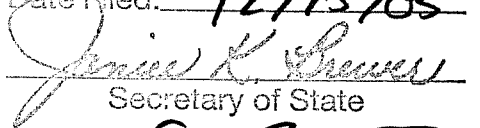

I. RECITALS

1. The State is empowered by Arizona Revised Statutes § 28-401 to enter into this Agreement and has delegated to the undersigned the authority to execute this Agreement on behalf of the State.

2. The Forest Service is empowered to enter into this Agreement by the Cooperative Funds Act of June 30, 1914, 16 U.S.C. 498 and the Intergovernmental Cooperation Act of 1968, as amended by the Intergovernmental Cooperation Act of September 13, 1982, Title III, 31 U.S.C. 6501-6508, Pub. L. 97-258, and resolved to enter into this Agreement and has authorized the undersigned to execute this Agreement on behalf of the Forest Service.

3. Incident to a roadway improvement project on SR 179, the State shall remit to the Forest Service a one-time lump sum amount of \$200,000.00 as required in the mitigation process for restroom facilities at the Village of Oak Creek Overlook, Coconino National Forest area MP 308.3.

THEREFORE, in consideration of the mutual Agreements expressed herein, it is agreed as follows:

NO. 27874
Filed with the Secretary of State
Date Filed: 12/15/05

Secretary of State
By: 

II. SCOPE OF WORK

1. The State shall:

a. Upon execution of this Agreement and within thirty-days (30) after receipt of an invoice from the Forest Service, remit to Forest Service a one-time lump sum amount of \$200,000.00 for the cost of the mitigation effort, including indirect cost assessed at the rate 17.8% on all non-procurement expenditures.

2. The Forest Service shall:

a. Upon execution of this Agreement, invoice the State for a one-time lump sum amount of \$200,000.00 including indirect cost assessed at the rate 17.8% on all non-procurement expenditures as required in the mitigation process for cost of restroom facilities Village of Oak Creek Overlook, Coconino National Forest area MP 308.3.

III. MISCELLANEOUS PROVISIONS

1. The terms, conditions and provisions of this Agreement shall remain in full force and effect until completion and reimbursements provided herein, but not to exceed 5 years from the date of the last signature unless extended. This Agreement may be cancelled upon mutual agreement, if the proposed objectives outlined in the Agreement are not being met, with a thirty-day (30) written notice to either party. Modifications to this Agreement shall be made by mutual consent of the parties, prior to any changes being performed. The Forest Service and the State are not obligated to fund any changes not properly approved in advance.

2. This Agreement shall become effective upon filing with the Secretary of State.

3. The United States Federal Government, acting as the Forest Service, does not have the authority to indemnify and hold harmless the State of Arizona from any and all claims, liabilities, losses, damages, charges, etc. The State of Arizona does not have the authority to indemnify and hold harmless the United States Federal Government from any and all claims, liabilities, losses, damages, charges, etc. The State of Arizona will be responsible for errors, omissions and negligence of its employees. The United States Federal Government will be responsible for errors, omissions and negligence of its employees to the extent provided by Congress under the Federal Tort Claims Act 28 U.S.C. 1346 (b), 2671-2680, as amended by P.L. 89-506, 80-Stat. 306.

4. This Agreement may be cancelled in accordance with Arizona Revised Statutes § 38-511.

5. The provisions of Arizona Revised Statutes § 35-214 are applicable to this Agreement.

6. Applicable laws of the State and Federal Government shall govern the rights of the parties with respect to the performance of this Agreement. The parties hereto shall select a process for the resolution of claims or disputes relating to this Agreement, compliant with the applicable laws and regulations of the State and Federal Government, and acceptable to the State and Federal Government. Such process will include a provision for arbitration.

7. All notices or demands upon any party to this Agreement shall be in writing and shall be delivered in person or sent by mail, addressed as follows:

Arizona Department of Transportation
Joint Project Administration
205 S. 17th Avenue, Mail Drop 616E
Phoenix, Arizona 85007
Phone (602) 712-7344
Fax (602) 712-7424

Coconino National Forest Service
Judy Adams
1824 South Thompson Street
Flagstaff, Arizona 86001
Phone 928-527-3600
Fax

8. This Agreement is subject to all applicable provisions of the Americans with Disability Act (Public Law 101-336, 42 U.S.C. 12101-12213) and all applicable Federal regulations under the Act, including 28 CFR Parts 35 and 36. The parties to this Agreement shall comply with Executive Order Number 99-4 issued by the Governor of the State of Arizona and incorporated herein by reference regarding "Non-Discrimination".

9. Improvements placed on National Forest System land at the direction of either of the parties shall thereupon become the property of the United States, and shall be subject to the same regulations and administration, including maintenance, of the Forest Service as other National Forest improvements of a similar nature. No part of the instrument shall entitle the State to any share of the interest in the project other than the right to use and enjoy the same under the existing regulations of the Forest Service.

10. This instrument in no way restricts the Forest Service or the State from participating in similar activities with other public or private agencies, organizations, and individuals.

11. Contributions authorized by the State for use by the Forest Service which are not spent or obligated for projects(s) approved under this instrument will be refunded to the State or authorized for use for new projects as agreed with the State, pursuant to Part II (A) and (B) (amendments).

12. Any State contributions made under this instrument do not by direct reference or implication convey Forest Service endorsement of the State's projects or activities.

13. Non-Availability of Funds: Every payment obligation of the State under this Agreement is conditioned upon the availability of funds appropriated or allocated for the payment of such obligations. If funds are not allocated and available for the continuance of this Agreement, this Agreement may be terminated by the State at the end of the period for which the funds are available. No liability shall accrue to the State in the event this provision is exercised as a result of termination under this paragraph.

14. Any information furnished to the Forest Service under this instrument is subject to the Freedom of Information Act (5 U.S.C. 552).

15. In accordance with Arizona Revised Statutes § 11-952 (D) attached hereto and incorporated herein is the written determination of each party's legal counsel and that the parties are authorized under the laws of this State to enter into this Agreement and that the Agreement is in proper form.

16. By signature below, the State and the Forest Service certify that the individuals listed in this document as representatives of the State and the Forest Service are authorized to act in their respective areas for matters related to this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement the day and year first above written.

USDA FOREST SERVICE
COCONINO NATIONAL FOREST SERVICE

STATE OF ARIZONA
Department of Transportation

By 

NORA B. RASURE
Forest Supervisor

By 

SUSAN TELLEZ
Contract Administrator

The Authority and format of this instrument
Has been reviewed and approved for signature

By 

ELIZABETH A. VENSEL
Grants & Agreements Specialist



TERRY GODDARD
Attorney General

OFFICE OF THE ATTORNEY GENERAL
STATE OF ARIZONA

CIVIL DIVISION
TRANSPORTATION SECTION
Writer's Direct Line: 602.542.8855
Facsimile: 602.542.3646
E-mail: Susan Davis@azag.gov

INTERGOVERNMENTAL AGREEMENT

DETERMINATION

A.G. Contract No. KR05-1157TRN (**JPA 05-018**), an Agreement between public agencies, i.e., The State of Arizona and Coconino National Forest, has been reviewed pursuant to A.R.S. § 11-952, as amended, by the Undersigned Assistant Attorney General who has determined that it is in the proper form and is within the powers and authority granted to the State of Arizona.

No opinion is expressed as to the authority of the remaining Parties, other than the State or its agencies, to enter into said Agreement.

DATED: December 5, 2005

TERRY GODDARD
Attorney General

A handwritten signature in cursive script, reading "Susan Davis", written over a horizontal line.

SUSAN E. DAVIS
Assistant Attorney General
Transportation Section

SED:mjf:937228
Attachment